(Testimony of E. Hewitt Magee.)

Q. Did you see the invoice of Nye & Nissen for eggs, butter and cheese delivered on the steamship Cape Cumberland at that time?

A. Yes, I did.

Q. Will you look at this Exhibit 140 and see if you can identify it like the one you saw on the vessel?

A. Yes, that is a copy of the one that I saw at the time on the vessel.

Q. In whose possession was it on the vessel?

A. The chief steward of the vessel had that invoice included with many others for deliveries of food he had received in the last day or so.

Q. The invoice mentions 15 cases, Medium, AA, Processed. Did you see 15 cases of eggs on that ship?

A. Yes, I looked at the eggs on that vessel.

Q. Where were they?

A. They were in the chill box.

Q. And what did you observe in regard to the labels and other markings on these cases of eggs?

A. Well, from my records the eggs bore a Nye & Nissen label and had an inspection stamp of the U. S. Department of Agriculture, which included the date May 4, 1944, indicating that they were inspected on that date.

Q. All of the 15 cases had this stamp on them, did they?

A. As far as I can recall, they did.

Q. And these eggs were examined by Major Evans on that occasion, were they?

(Testimony of E. Hewitt Magee.)

A. Yes, they were candled by Major Evans, and also, I believe, weighed by Major Evans or Special Agent Johnson.

Mr. Faulkner: There is nothing in this record that shows he ever touched an egg on the Cape Cumberland, not a word.

Mr. Pratt: Isn't there?

Mr. Faulkner: No, not a word.

Mr. Pratt: Well, what of it?

Mr. Faulkner: This is his witness. Major Evans gets on the stand and testifies to the cases he examined, and then [2651] they put on a witness to show he did not testify correctly.

Mr. Prat: No, I am not showing anything of the sort.

Mr. Faulkner: What is the purpose of the testimony?

Mr. Pratt: I am going to examine this witness about the cheese on this vessel.

Mr. Faulkner: The witness Evans has given no testimony whatever that he examined any eggs on the Cape Cumberland. The witness Magee gets on the stand and he says he did. Now, we are not involved in any controversy between the Army and the Department of Justice whether he did or did not, and he is attempting to impeach the testimony of Major Evans.

Mr. Pratt: Mr. Faulkner, don't be absurd.

Mr. Faulkner: I am not absurd at all. That is this record.

Mr. Pratt: If the Court please, I am very sure

(Testimony of E. Hewitt Magee.)

that Major Evans examined the eggs on a lot of boats that he did not testify to here on the stand. On this particular boat he was there and examined the eggs and I did not question him about them. I am not going to examine Mr. Magee on the character of the eggs, as to the eggs he saw, except insofar as the exterior is concerned, they all had the stamp of the Department of Agriculture inspection. Now my inquiry so far as this issue is concerned relates to cheese. The mere fact that I did not ask Major Evans about his examination of the eggs on this boat means nothing whatever. We make no claim [2652] about the eggs on this boat other than that they were stamped Department of Agriculture with the stamp dated May 4, 1944.

Mr. Faulkner: May I have the last few questions and answers, having in mind what Mr. Pratt has just said?

The Court: Read the last several questions and answers.

(Record read.)

Mr. Faulkner: Now, Mr. Pratt has just told your Honor he proposes to make no inquiry concerning eggs. This whole subject matter relates to eggs.

The Court: There is nothing before the Court, gentlemen. We will have to proceed.

Mr. Pratt: Q. Now, with regard to the cheese, I observe the invoice describes 4 cases of California loaf cheese, 112 pounds. Did you see this cheese, these four cases of cheese?

A. Yes, I did.

(Testimony of E. Hewitt Magee.)

Q. Where were they?

A. Well, they were in the chill box of the vessel when I went aboard.

Q. What did you do in regard to that cheese?

A. I examined the boxes, I made a note of the markings, and then I opened the boxes, took the cheese out, and weighed it.

Q. What markings were there on those boxes?

A. On each box was marked "California Cheddar Loaf Cheese, Factory No. 1621, Nye & Nissen, S. F.", and then other markings were on the loaves of cheese themselves. On each loaf was a marking "Factory 1621, Whole Milk," without the name of the company. That [2653] marking appeared on each loaf of cheese.

Q. Now, you weighed these four cases of cheese, did you? That is, you weighed the cheese separately from the cases? Did you take the cheese out of the boxes?

A. Yes. On each box I opened the box and took the cheese out.

Q. And weighed it?

A. Yes, and weighed it.

Q. Weighed the cheese. Now, the first of these boxes or cases of cheese, what did the cheese weigh net?

A. The first box, the five loaves that filled the box, were taken out and found to weigh 26 pounds, 4 ounces.

Q. And the second one?

(Testimony of E. Hewitt Magee.)

A. The second box of cheese weighed 26 pounds, 8 ounces.

Q. And the third one?

A. The third one, the cheese weighed 25 pounds, 5 ounces.

Q. And the fourth one?

A. The fourth one, the cheese weighed 26 pounds, 5 ounces.

Q. The total weight of cheese in these four cases was what?

A. The total weight was 104 pounds, 6 ounces.

Mr. Pratt: If the Court please, the testimony of this witness in regard to the weight of this cheese is in support of the allegations in the first count of the indictment in overt act E, wherein an allegation is made——

Mr. Faulkner: We submit this is argument, your Honor. You offered this on the first count.

Mr. Pratt: Wherein it is alleged—— [2654]

Mr. Faulkner: Just a moment. It is not proper during the examination as you proceed to read from the indictment and argue your case as you go along.

The Court: He is offering this testimony in relation to Count No. 1 of the indictment.

Mr. Faulkner: That is right. That is perfectly proper.

The Court: That is sufficient.

Mr. Pratt: Q. Now, I direct your attention to a visit that you made on the steamship Heber Creel. Do you recall that?

(Testimony of E. Hewitt Magee.)

A. Yes, I do. I went aboard that vessel.

(The witness's notes with respect to the subject matter were marked Defendants' Exhibit BN for Identification.)

Mr. Pratt: Q. You made certain notes at the time of what you observed and what you did on this ship?

A. Yes, I did.

Q. And you now have them to refresh your recollection?

A. Yes, these are the notes I made.

Q. When was it you went on that ship?

A. I went on that ship on May 13, 1944.

Q. With whom?

A. With Major Evans and Special Agent Herman Sullivan.

Q. He is an FBI agent? A. Yes, he is.

Q. Where was this ship when you visited her?

A. This ship was at Pier 16 in San Francisco.

Q. Did you see an invoice of Nye & Nissen on the occasion you were on the ship?

A. Yes, I did. [2655]

Q. I direct your attention to Exhibit 164 and ask if you saw an invoice like this when you were on the boat?

A. Yes, I saw an invoice, which was either this one or a copy of this one, and also a customer's invoice, which has the same items listed on it.

Q. What do you mean by a customer's invoice?

A. Well, that would be the yellow copy, which the truck driver of Nye & Nissen has with him

(Testimony of E. Hewitt Magee.)

and sometimes leaves with the steward of the vessel.

Q. Now, this invoice charges for 50 cases, Medium Processed A Eggs, *1500 eggs.* Did you see 50 cases of eggs on that ship?

A. Yes, I did. I observed 50 cases on the vessel and I also observed the eggs—when I first saw them they were on Pier 16, and I waited there with Major Evans and Special Agent Sullivan while those eggs were loaded aboard the vessel.

Q. And then when they were on the vessel you then made an examination of the cases, did you?

A. I observed that all of the egg cases bore the U. S. Department of Agriculture stamp listing the grade as AA and the date on the stamp as May 10, 1944.

Q. The date again? A. May 10, 1944.

Q. You say they had the Department of Agriculture stamp AA, right?

A. They had AA, and I also had noted that they said "Government graded." That was included right in with the stamp, the words "Government Graded". [2656]

Q. In the Department of Agriculture rubber stamp? A. It was.

Q. Did you observe the cheese that was mentioned in the invoice as described like this: 6 bundles of 5 Processed American, 1 case Romano Dolce, 1 case Cheddar Loaf, 1 Back Graded Cheese? Did you see that?

A. Yes, I saw all of that cheese.

(Testimony of E. Hewitt Magee.)

Q. Did you also see 23 boxes of butter?

A. I have a correction to make. I saw the cheese that was delivered to the vessel, but I do not think the cheese that was delivered corresponded exactly to the listing on the invoice, but I saw all the cheese that was delivered to fill that order.

Q. How many boxes of American Processed cheese did you see?

A. Well, I saw 5 cases of American Processed cheese, which weighed 150 pounds.

Q. What else did you see in the way of cheese?

A. On the Romano Dolce type cheese I saw one box, apparently an old egg crate, which was labelled "Worthmore Egg Company," and this box when opened contained six flat Romano Dolce wheels of cheese, each of them being stamped, "Whole Milk, Romano Dolce type, Factory No. 1621." This same stamp was on the outside of this box that the cheese was contained in.

Q. You say it was an old egg crate?

A. It appeared to be an old egg crate.

Q. Now, did you weigh the one case of Romano Dolce cheese?

A. Yes, I weighed that cheese and found it to weigh 54 pounds, [2657] 3 ounces.

Q. That was the only Romano Dolce cheese on the ship, was it?

A. That was the only Romano Dolce cheese that had been put on from the pier to the vessel.

Q. In your presence?

(Testimony of E. Hewitt Magee.)

A. In my presence, and was the only cheese I knew of on the vessel. There was no more in the chill box.

Q. How about the Cheddar Loaf cheese? How much did you see of that?

A. Well, there were two cases of Cheddar Loaf cheese. It is two boxes. Each box was marked "Factory No. 1621, Nye & Nissen, San Francisco, 8-1-1," and then the words "Whole Milk." And the second box was marked the same except instead of 8-1-1, they had 9-2-9-1. And I opened these boxes, took the cheese out, and weighed the cheese.

Q. And what did it weigh?

A. Well, the cheese in case No. 1 weighed 26 pounds, 1 ounce. The cheese in case No. 2 weighed 24 pounds, 11 ounces.

Q. The results of your examination of this cheese showed, as you have indicated, that it did not correspond with the cheese described in the invoice, is that right?

Mr. Faulkner: We object to that as calling for an opinion and conclusion.

The Court: If he knows he may answer. The objection is overruled.

Mr. Faulkner: Exception. [2658]

The Witness: The invoice, according to my notes made of the invoice I saw on the ship, called for one case of Cheddar Loaf cheese at 29½ cents a pound.

Mr. Pratt: Q. How many pounds?

A. And then they say at 30 pounds, making a total of $8.85. My examination showed there were

(Testimony of E. Hewitt Magee.)

two cases of Cheddar Loaf cheese weighing a total of 50 pounds, 12 ounces. The invoice that I saw listed 6 boxes, 5-pound Processed American Cheese, 180 pounds at 34.9 cents, showing a total of $62.82 for the American Processed cheese. In my examination in the place of 6 boxes I found 5 boxes of cheese which weighed 150 pounds, rather than the 180 pounds shown on the invoice. The Romano Dolce cheese was shown in the invoice as one case, that is, 65 pounds at 40 cents a pound, which was charged for at $26.00. When I weighed the Romano Dolce cheese I found the one case, but the cheese in that case did not weigh 65 pounds. In the Romano Dolce cheese it weighed 54 pounds, 3 ounces.

Q. Was there any weight marking on this case of Romano Dolce cheese?

A. On this case of Romano Dolce cheese there was a weight 56 pounds stencilled or stamped on the box beside the name of Nye & Nissen, San Francisco.

Q. Now, is there anything further in connection with your visit on the steamship Heber M. Creel that you have not told about?

A. No sir. We looked at the butter. That appeared to be as listed on the invoice. [2659]

Q. That is, you weighed it?

A. I do not have any record of that. I do not think we weighed the butter, but we did see that there were sixty prints in each box.

(Testimony of E. Hewitt Magee.)

The Court: The jurors may take a recess for a few minutes.

(Recess.) [2659-a]

The Court: You may proceed.

Mr. Pratt: Q. Mr. Magee, did you make a visit to the steamship James Oliver?

A. Yes, I did.

Q. Did you make some notes of what you observed and what you did on that occasion?

A. Yes, I made notes at the time I was on the vessel.

(The documents were marked Defendants' Exhibit BO for Identification.)

Mr. Faulkner: I would like to ask Mr. Magee a question.

Q. Mr. Magee, I understood you to tell us a little while ago that your method of operation was that you carried a notebook somewhat similar to a shorthand notebook and you made your rough notes of your activities on the vessel, and then you withdrew the paper from the shorthand notebook and threw the book away. This is a rough draft of something you had prepared at a prior time, isn't it?

A. No. Some occasions I carried my brief case along and when I did I usually have this big pad in it and use that occasionally. The notebook I carry along at other times. I carry a briefcase in my hand certain days, and I carry extra paper. On this particular occasion, this is a note of things which happen when someone calls us on the phone,

(Testimony of E. Hewitt Magee.)

but the notes I actually made on the job were made at the same time we were aboard the vessel, but occasionally I use a stenographic notebook and sometimes this tablet.

Q. As these matters progress, you make notes in your book [2660] and that is your book?

A. In the book if I have a book.

Q. That is your book on that job, you wrote that on the ship——

A. Yes, these are my original notes for the particular day, and generally they are made right on the vessel, and sometimes in the car when we get off.

Q. Which was this?

A. These, I believe, I am quite certain were made on the ship.

Q. As the events transpired?

A. Except they may be, on top, here, this may have been made in the office before I went to the job.

Mr. Faulkner: All right.

Mr. Pratt: Q. When was it you went on this ship?

A. I went on this ship on May 23, 1944.

Q. With whom? A. With Major Evans.

Q. Where was the ship?

A. This ship was in drydock No. 4 at the Moore Dry Dock Company in Oakland.

Q. It was not in the water, then?

A. No, it was in the drydock.

Q. When you got on the boat, did you see the

(Testimony of E. Hewitt Magee.)

invoice of certain products, the invoice of Nye & Nissen for delivery of some products to that ship?

A. Yes, I did. The chief steward of the vessel had a copy of the invoice.

Q. I show you Exhibit 147 and ask if that is identical with the invoice you saw on that occasion.

A. Yes, it is. That is the same except for some of the other signatures.

Q. This invoice describes two boxes of butter and eight cases [2661] of eggs, Medium, AA, Processed, delivered to the steamship James Oliver, Moore Dry Dock No. 4, inspected by W. F. A. Did you examine these eight cases of eggs on that ship?

A. Yes, I did.

Q. Where were they?

A. Eight cases were in the chill box of the vessel at the time I went aboard.

Q. Did they have any inspection stamp of the Department of Agriculture, or other Governmental agency, on any of the cases?

A. None of these cases bore any inspection stamp of any description, with the exception that two cases bore notations from U. S. Veterinary Corps, old dates. I recall that those dates were four or five months previous. They were apparently re-used cases.

Q. The other eight cases, what stamps or labels did they have on them—the other six cases, I should say.

A. Two of the eight bore "Biddy Egg" labels.

(Testimony of E. Hewitt Magee.)

the Nye & Nissen green label, and the other six cases bore various stenciled labels, including Nye & Nissen, San Francisco, that was the words, "Nye & Nissen, San Francisco," put on there apparently by a rubber stamp.

Q. Was there a paper label on those six cases?

A. I don't believe there was. I know, as I said, two of them had the "Biddy" label; the others had no other paper label, but had the stamp "Nye & Nissen."

Q. Was there any marking on these stamps to indicate the grade [2662] or size of the eggs?

A. Well, all the cases in addition bore a stamp, "Medium Grade A," which was also apparently placed on there by a rubber stamp.

Q. I will direct your attention to Exhibit 44 in evidence, and I will ask if you can identify that label.

A. This was one of the labels taken from one of the two cases that bore this "Biddy Egg" label from this vessel. It contains the name of the vessel and the date and my initials.

Q. It reads "30 dozen Medium Biddy Eggs Grade A," and the rubber stamp, "Carefully selected and packed by Nye & Nissen, Inc., General Offices San Francisco." Is there anything further, according to the notes, that you observed on that occasion that you have not testified to?

A. Well, these eight boxes, one of them was noted to contain a pencil notation on the top of the case, "D. Med." the letter "D" and the word

(Testimony of E. Hewitt Magee.)

"Med" which was written on there, I guess, as Dirty Mediums. Major Evans examined the eggs on the vessel and he particularly looked at the eggs in this one case that had the writing, "D-Med".

Q. That was in your presence?

Mr. Faulkner: Well, it is a conclusion of the witness what the imprint would stand for. That is his conclusion.

The Court: Read the answer.

(Answer read.)

The Court: What he believes may go out. Let the jury [2663] disregard it.

Mr. Pratt: Q. In connection with your testimony about the Heber M. Creel, you testified that one of the boxes of cheese was stamped "56 pounds." In the other boxes or cases of cheese that you examined in connection with any of these vessels, what, if any, markings or stamps indicating weight did you find?

Mr. Faulkner: We object to that. The vessel is not fixed. The circumstances under which he examined it is not fixed. The consignor of the case is not fixed.

Mr. Pratt: I am referring to the testimony that he has already given in regard to the cheese on these several boats. I am asking the general question whether there was any marking of weight on any of the cases or boxes which he observed on the ships concerning which he has testified today.

Mr. Faulkner: That is too general, your Honor. In other words, he has given a list of six or eight ships and some refer to eggs and some refer to

(Testimony of E. Hewitt Magee.)

cheese. In this particular case he is asked what the marking was on the cheese box——

The Court: He may state whether or not there was any marking.

The Witness: With the exception——

Mr. Faulkner: I submit, your Honor, he should indicate what ship it is so we know what he is referring to.

Mr. Pratt: It is negative testimony.

Mr. Faulkner: That's right, and that is the objection. [2664] We are not bound by negative testimony.

The Court: Were these boxes marked?

Mr. Faulkner: Exception.

The Witness: No, your Honor, with the exception of that one box that had the "Net weight 56 pounds" none of the other boxes of cheese were observed by me to have any weight marking on them.

Mr. Pratt: You may cross-examine.

Cross-Examination

Mr. Faulkner: Q. Mr. Magee, sometime in the months of April or May of 1944 you made an examination of certain merchandise that came, or presumably came from the plant of Nye & Nissen and was delivered on the waterfront, is that right?

A. I did make examinations on various ships.

Q. What was the first vessel you examined?

A. As I recall from memory, it was the John Muir.

(Testimony of E. Hewitt Magee.)

Q. Up to the time of your going down to the John Muir had you gone down to any other vessel for the purpose of examining any merchandise which had come from the plant of Nye & Nissen?

A. No, I do not believe I did. As I say, that is the first one, as far as I can recall.

Q. You stated on your direct examination that you started, you commenced work on the matter of Nye & Nissen in March, 1944. Now, the transaction relating to the John Muir occurred sometime around the 24th of April, 1944. In connection with your work. [2665] on documents which you have brought into court, they are not all of your records relating to your presence on that ship concerning the firm of Nye & Nissen, are they?

A. Well, I——

Q. "Yes" or "No."

A. I do not understand the question.

Q. You brought into court a memorandum which refreshed your recollection of every ship you were on except the Josiah Royce. I will ask you if it is not a fact that you were on other ships and have other memoranda relating to what transpired on those ships relating to the firm of Nye & Nissen in the months of April and May, 1944.

A. I went onto another ship——

Q. "Yes" or "No."

A. But I don't think I have memoranda of it.

Q. You have no memoranda?

A. I don't think I have.

Q. Before you went onto the Josiah Royce, Mr.

(Testimony of E. Hewitt Magee.)

Magee, in relation to the examination of any merchandise from the firm of Nye & Nissen with any Army officer is it not a fact that you had gone down and examined merchandise of that firm with a member of the Department of Agriculture?

A. I don't recall of ever going on a ship with a member of the Department of Agriculture, unless you mention the name. I may have.

Q. In the months of April or May, 1944, did you go on any ship and examine merchandise that is supposed to have emanated from the firm of Nye & Nissen with an inspector from the Department of Agriculture; "Yes" or "No."

A. I don't recall going down. [2666]

Q. The first ship you went on was April 24, 1944?

A. The John Muir, which, I believe, was on the 24th of April.

Q. Did you prior to the 24th of April, 1944, before going on the John Muir, have a conversation with a man named Nystrom; "Yes" or "No."

A. Yes, before that.

Q. How long before that?

A. I saw him on a Friday or a Saturday immediately before that, which, I believe is, the 21st or 22nd of April. That was the first I talked to him.

Q. How long before going down to the John Muir, in hours, did you have that conversation with Nystrom?

A. Possibly three or four hours.

(Testimony of E. Hewitt Magee.)

Q. Where were you at the time the telephone call came in? A. Out working.

Q. Did you get the message and phone him?

A. I probably received a message that Nye & Nissen was delivering to a ship and wanted me to phone him at that time.

Q. Then you went down to the pier where the John Muir was, is that right?

A. That is correct.

Q. Is that correct? A. Yes.

Q. Did you go alone?

A. No. I went to the John Muir with Colonel Hand.

Q. Where did you pick up Colonel Hand?

A. At the Presidio, his office.

Q. Was that the first occasion that you and Colonel Hand had gone to any ship for the purpose of investigating any [2667] merchandise that is supposed to have come from the firm of Nye & Nissen?

A. As far as I can recall it.

Q. When you got down to that vessel did you see Mr. Nystrom?

A. I didn't see Mr. Nystrom, to the best of my knowledge, on that occasion.

Q. Did you see Mr. Nystrom on any of the occasions that you went down and examined any merchandise that bore a Nye & Nissen label of any kind during the months of April and May, 1944?

A. I recall one occasion when I saw him. I happened to run into him on a pier down there when

(Testimony of E. Hewitt Magee.)

he was taking eggs from the George Julian, which was a War Shipping Administration vessel.

Q. When was that?

A. I don't remember the exact date, but that was in the early part of May, I believe.

Q. On the John Muir you observed certain cases of eggs. It is a fact, is it not, that those eggs which you observed on that ship, those that bore a Department of Agriculture stamp, that they bore a stamp dated April 18, 1944?

A. I believe so; whatever my notes show on that.

Q. Do you remember how many cases of eggs bore a stamp on that vessel, without your notes?

A. I believe all but ten cases. I think there were forty, probably forty or forty-five cases, and all but ten cases, I am sure, had a stamp.

Q. Do you recall where the eggs were when you first observed them?

A. They were in the chill box. [2668]

Q. They were in the chill box. As you went into that chill box you observed the 45 or 50 cases, and as you glanced at them in the box were they the only eggs in the box?

A. I believe so. If there were other eggs there were only one or two cases.

Q. As you went into that chill box and looked in there, how many cases could you tell from that look in there bore a Department of Agriculture stamp?

A. I looked at all of these cases.

(Testimony of E. Hewitt Magee.)

Q. I mean when you opened the door and you looked at these cases, how many cases bore a Department of Agriculture stamp?

Mr. Pratt: I think the witness is entitled to have his notes. He is being asked specifically now, and he is entitled to refresh his memory.

Mr. Faulkner: That is not the point of this cross-examination. I am trying to get how many —he specified for you, and I want to know how many he looked at in that chill room before or did not bear a Department of Agriculture stamp.

The Court: He may answer.

A. As I understand the question, in the chill room I looked at all the cases. I had to climb over some of them.

Mr. Faulkner: Did you examine each individual case?

A. Yes, I did. We pulled the cases out and we had help in handling those cases, 45 to 50 cases which we handled for 40 or 50 minutes at a time, lifting them all around. [2669]

Q. That is just the point. For you to determine and reach a conclusion of how many cases were stamped or how many cases were unstamped you had to climb upon the cases, you had to pull them down, and you had to examine both ends of the cases? A. That is correct.

Q. So when you looked at those as a lot of cases in a chill room you had no idea whatever of how many were or were not stamped?

(Testimony of E. Hewitt Magee.)

A. Not until I examined the cases, although on some occasions when it says on an invoice——

Q. No. I am talking about looking into the chill room in the John Muir and not talking to Mr. Nystrom or anybody.

A. Well, on the John Muir, as far as I recall, I knew nothing about the eggs until I was aboard the vessel and looked at the invoice and examined the eggs in the chill box.

Q. You would climb over them and pull them down and examine both ends?

A. That is correct.

Q. As you opened the door of the chill room, before you climbed over the cases to examine both ends, could you tell from examining that lot of cases how many had a letter "P" on the cases and how many didn't?

A. From handling certain of the cases.

Q. When did you discover that letter "P" on the end of the cases? A. On that vessel?

Q. Yes.

A. Well, without my notes I cannot say for sure whether there were ten cases with the "P" —I think so. [2670]

Q. Well, assume there were ten cases marked that you referred to—may I have the envelope that you have your notes in?

A. On that particular vessel, ten cases bore that letter "P".

Q. How did you determine that ten cases bore

(Testimony of E. Hewitt Magee.)

that large letter "P", describe what you did to make that discovery?

A. We went into the chill box on the vessel and the eggs were piled in part of the chill box. They took up a good portion of it. A certain number of cases you could not see the ends without touching anything. They were piled three or four high and probably five or six stacks of them. We then moved those cases out to get at the next row, and we lifted eggs off the top, and we loosened the stack up by moving cases away until we could observe each case in the lot. I can't say at what particular minute I found ten of them with the "P" but I looked at all of those cases eventually and made a record.

Q. In other words, Mr. Magee, it is a fact, is it not, that your testimony here relating to the marking on those cases was the result of a very methodical handling of each case of eggs in that chill room?

A. Are you talking about this particular vessel? At the time we went on there that vessel——

Q. Please answer "Yes" or "No."

A. I don't know just what you mean by "methodical" handling.

Mr. Faulkner: I will withdraw the question.

Q. If you don't understand the question I will withdraw it. [2671]

When you went in the chill room you did not determine that a single box bore a letter "P" on

(Testimony of E. Hewitt Magee.)

it until you had actually handled the box and observed both ends of it?

A. I would say that was correct, yes.

Q. In connection with your noticing the number of cases that bore a Department of Agriculture stamp, you did not reach any conclusion in respect to that subject until you had handled each box and observed both ends; isn't that correct?

A. That is correct. There would be no other way to know it until we examined each case.

Q. You did make that type of examination?

A. I did.

Q. On the John Muir did the cases bear any other stamp except the Department of Agriculture stamp and a "Biddy Egg" label?

A. Not that I observed, not particularly on the label; I couldn't say everything that was on all parts of the case, but when the label has a stamp with a "P" on it—in other words, I can't say if there was a pencil marking on some of the cases, or not. [2672]

Q. Do you know whether any of the cases had any stamp indicating an inspection by the Department of Agriculture or the Veterinary Corps on the side of the cases?

A. I can't tell from my records if they did or not. I said here they bore on the label or the box the U. S. Department of Agriculture inspection stamps, which would indicate at this time that some of them did not have the stamp necessarily on the label. They had it on some part of the wood. But

(Testimony of E. Hewitt Magee.)

I think it would be generally on the end of the case.

Q. In your examination of the eggs in various places and on various ships, it is true, is it not, that you found the Department of Agriculture stamp or the Veterinary Corps stamp on either the ends or sides of the boxes or fiber cartons, isn't that true?

A. Well, it might have been on the top occasionally, too.

Q. Or on the top. It is further true, is it not, Mr. Magee, that all the containers that you have examined on every ship which you have referred to in your direct examination was a secondhand case?

A. No, that is not correct.

Q. Tell me the name of a single case where the containers that you saw in which the eggs were contained were new. Give me the name of the ship?

A. Well, I cannot do that, but, as I recall, a lot of these shipments did not appear to me to be secondhand cases.

Q. Give me the name of a single ship where you observed these [2673] cases, where they did not appear to be secondhand?

A. Well, I would have no way of doing that. I didn't mark in my records whether they appeared to be new cases or secondhand cases, so I couldn't recall that at this time.

Q. What is your best recollection of the cases contained on the John Muir?

A. My recollection is that they appeared to be

(Testimony of E. Hewitt Magee.)

good new cases and they did not appear to be re-used cases.

Q. Did you participate in the preparation of the records prepared by Colonel Hand in respect to the John Muir?

A. I did not write any of his records, if you mean that.

Q. Did you observe him writing any of his records in connection with his description of the cases that all of them were used? Did you observe that when you were on the John Muir?

A. No, I did not, because that was part of his record. I did not necessarily want to keep duplicate records of his findings.

Q. Your memory is that they were new?

A. My memory is that they appeared to be cases that looked new to me. They were not the type I had seen on some other ships at a later time.

Q. Did you examine any cheese on the John Muir? A. I did not.

Q. Did you examine any butter on the John Muir? A. No, I did not.

Q. At the time you went aboard that vessel you knew there had been delivered aboard that vessel cheese, butter and eggs, did you not?

A. That is right.

Q. Was any cheese or butter examined in your presence by [2674] anybody?

A. Colonel Hand may have tested some of the butter, but I do not recall that. I did not examine

(Testimony of E. Hewitt Magee.)

the cheese or butter myself on that particular vessel.

Q. Why?

A. Well, at that time I did not examine the cheese because I had no reason to believe that they were short weighing it. I found that out later.

Q. In other words, it was not until your association with Mr. Nystrom had progressed a little further that your attention was directed to the cheese down there, isn't that right, Mr. Magee?

A. No, I do not think Mr. Nystrom directed my attention to the cheese. I think we received a complaint on that from some other source. So from then on we weighed the cheese.

Q. What agency complained of the weight of the cheese?

A. I do not recall what agency. We received numerous complaints.

Q. What ship made a complaint of the weights of the cheese?

A. I don't know what ship. It probably came from the War Shipping Administration.

Q. What person in the War Shipping Administration complained of weights of cheese? Give me his name?

A. We received complaints from numerous persons—Alexander Donald or Mr. Kimball over there—a lot of officials.

Q. Give me the name of a person who complained of the weight of cheese in April or May,

(Testimony of E. Hewitt Magee.)

1944, connected with the War Shipping Administration.

A. I can't do that. I think it [2675] came from War Shipping, though.

Q. You made a record of the complaint, didn't you? A. Probably.

Q. Isn't it a practice of your department if any complaint is received to make a record of it?

A. Not necessarily.

Q. Who exercised the judgement of when to and when not to make a record?

A. In which case are you referring to?

Q. In any case?

A. I can't answer that in any case.

Q. And you can't answer in this case either can you? A. I handled this case.

Q. Then you make the determination in a case you handle whether to make a record of a complaint or not, is that right? A. Sometimes.

Q. At all events on the John Muir there was an examination made by Colonel Hand and there were aboard that vessel—you had better take this back—there were 48 cases of eggs, weren't there? Isn't that correct? A. Yes, sir.

Q. And 38 of them had a Department of Agriculture stamp and 10 did not?

A. That is right.

Q. Now, an inspection was made while you were present of some eggs aboard that vessel by Colonel Hand, isn't that right? A. Yes sir.

Q. How many cases of eggs were selected to be

(Testimony of E. Hewitt Magee.)

inspected out of the ten cases that did not bear a Department of Agriculture stamp?

A. Well, I don't recall. That again was Colonel Hand's record. [2676] He inspected the eggs. He kept a record of it.

Q. But you observed them? A. Yes.

Q. You helped carry the cases, isn't that right?

A. Yes, I helped carry the cases. From my memory I would say out of those ten cases probably three he candled—that is from memory—I would say probably three cases.

Q. Now, did you observe the eggs on that ship?

A. Yes, I observed some of the eggs. We did not open all the cases.

Q. In those that were open?

A. Yes, I observed some of them in those that were open.

Q. Did you observe any Small eggs?

A. Yes, I did.

Q. What do you call a Small egg?

A. What do I call a Small egg?

Q. Yes, what do you call a Small egg?

A. I call it a Small egg or a Peewee egg.

Q. Do you use the terms interchangeably, Small and Peewee? A. No, I do not.

Q. Did you see any Peewee eggs on that ship?

A. They appeared to me to be Peewee.

Q. What did they weigh?

A. I did not weigh them.

Q. Did you see Colonel Hand weigh any eggs?

A. Yes, he weighed some.

(Testimony of E. Hewitt Magee.)

Q. Did he weigh them with a hand scale?

A. I think he did.

Q. Did he weigh the cases with an ordinary scale?

A. No, he did not, not on that vessel. [2677]

Q. Did you observe the weight that he had set that scale to?

A. No, he handled the scale. That is his scale. He knows adjustments to make. I did not touch his scale.

Q. Now, then, did you observe the eggs in the cases that had a Department of Agriculture stamp on them? A. Did I observe them?

Q. Yes. A. I observed some of them, yes.

Q. Were they small eggs?

A. As I recall, some of those cases I believe had some small ones mixed in with larger-sized eggs, but they were interchangeable in the case.

Q. In the John Muir?

A. I think so. Now, I have no record of that and I am talking only from what I think I recall.

Q. As you sit there now as a witness you think that you recall seeing small eggs among the eggs that had a Department of Agriculture stamp on them, is that right?

A. It may have been on that vessel. It may have been the Josiah Royce. It possibly was the Josiah Royce rather than this one.

Q. After you left the John Muir you went to the Josiah Royce, did you not? Was that the next vessel?

(Testimony of E. Hewitt Magee.)

A. Yes, I believe that was the next vessel.

Q. Do your recall when you went there?

A. I went there one day before I went on the Cape Pillar. I think I went on the Cape Pillar on April 25, so that would make it the 24th of April, 1944. [2678]

Q. You haven't any memorandum of the Josiah Royce, have you? A. No sir, I do not.

Q. Now, the facts in relation to that are these, are they not, that that was a rather complicated transaction and any notes you had with respect to the Josiah Royce were apparent to you to be unavailable for use in this trial, weren't they, Mr. Magee? A. No.

Q. Did you make any notes for the Josiah Royce?

A. I made notes on interviews with the steward, the interviews with the cook; the baker, and of complaints they had concerning the eggs on previous trips. But I did not have any notes that would be pertinent for trial.

Q. Did you make any notes similar to the notes you made for the Cape Cumberland, the steamer Charles, the Cape Pillar, the Henry White, the Mission San Diego, the James Oliver, the Heber Creel, and the John Muir?

A. Not similar to those, no sir. That is why I did not save any. There wasn't anything there.

Q. And that is your explanation, is it, Mr. Magee, the full explanation?

(Testimony of E. Hewitt Magee.)

A. No, it is not my explanation. You did not ask me that.

Q. Did you make a written report following your presence on the Josiah Royce? Did you make a written report within a day or two after your presence on the Josiah Royce?

A. To whom?

Q. To anyone in your department?

A. I make a written report [2679] on everything I do.

Q. Have you read your report concerning the Josiah Royce on your actions and the proceedings on that vessel in the months of April and May, 1944, in the last week or so before coming on this stand as a witness?

A. I don't think I have. Not in the last week or so.

Q. When was the last time you read your report that you made at or about the time?

A. That is hard to answer because I have reports totalling possibly three or four hundred pages which we have been using all during this trial, so I do not remember referring to that specific part of it on any special occasion.

Q. May I see the report, only that part of your report relating to the Josiah Royce that you made at or about the time that you were making an investigation aboard the Josiah Royce?

Mr. Pratt: To that I object. It is a report he made to his superior, which is confidential and is not subject to examination by counsel in the case.

(Testimony of E. Hewitt Magee.)

Mr. Faulkner: That is exactly what I told your Honor would be the position of the Government when they demanded to take from my portfolio the paper I was using. Now this witness has used in the preparation of this trial, in all the phases of it, a report that he prepared in April or May. I do not want to delve into their secret archives, but I would like to see his report that he typed at or about the time that he was [2680] making those notes, where he has not brought in the rough notes relating to the Josiah Royce, and I believe I am entitled to it and I will submit the objection.

Mr. Pratt: If the Court please, it has been held time and time again that the reports of a Government investigating officer made to his superior are not subject to subpoena or to examination by counsel representing defendants. So far as the analogy referred to by Mr. Faulkner, he produced a deposition from which he was reading to a witness and, of course, we were entitled to see it. How did we know he was reading correctly?

Mr. Faulkner: I produced a private copy of a public document. It was mine as much as the clothes I wear.

Mr. Pratt: How did I know he was reading from it correctly?

Mr. Faulkner: Because I showed it to him.

The Court: The Court is prepared to rule. The objection will be sustained.

Mr. Faulkner: Exception.

Q. You went, at all events, to the Josiah Royce.

(Testimony of E. Hewitt Magee.)

Did you receive a phone call on the day that you went to the Josiah Royce from Mr. Nystrom?

A. Either on that day or the previous evening, but it was probably that day.

Q. And you went down to that vessel?

A. Later some time after the phone call I went to the vessel.

Q. That brings us to the date of April 25, around that, is that [2681] right?

A. I believe the 24th.

Q. You think you got there before the merchandise did, Mr. Magee?

A. You have two invoices on that. As I recall, I was there on the 24th. Now, it may be the 25th.

Q. You were there with Colonel Hand?

A. That is right.

Q. And if his record shows the 25th, you would assume that was correct, would you?

A. I would assume so. He put the date down that we were there.

Q. You were there together; he put a date down; you would assume that was the date?

A. I did not put the date on his sheet. I didn't see what he put on at that time.

Mr. Pratt: I think the witness is entitled to his notes to refresh his recollection.

Mr. Faulkner: He hasn't got them. I have been trying to get them, Mr. Pratt. I asked you for them and you refused to give them to me. He refreshes his memory outside in the corridor and you won't show them to anybody.

(Testimony of E. Hewitt Magee.)

The Witness: I took no notes about that vessel, as I so testified before.

Mr. Faulkner: Q. Your report shows a complete record of what you did on the Josiah Royce, does it not?

A. It may, but they are not my notes. I am not using any report in here.

Q. They were prepared from your notes?

A. I dictated the report, sure. [2682]

Q. And it was dictated from the notes you destroyed?

A. Possibly. I don't recall whether I used any notes to dictate that report or not.

Mr. Faulkner: I am not trying to go beyond the Court's ruling. The Court has ruled. I did not mean to bring up that subject again.

The Court: Let the jury disregard the comments of both sides. Let it go out of the record for any purpose of this case.

Mr. Faulkner: Yes, your Honor.

Q. At all events, on the Josiah Royce you observed on the occasion that you went down there some eggs in a chill box?

A. That is right.

Q. By that way, what ships did these come out of (referring to tags)? Are they marked on these exhibits?

A. Yes, they are. If I can see them I can tell. This is the Henry White, this is the Henry White, and this is also the Henry White (handing documents to Mr. Faulkner).

Q. Now, on the Josiah Royce there were 50 cases

(Testimony of E. Hewitt Magee.)

of eggs in a chill box and 10 cases of eggs on a pier, is that right?

A. I recall that was the situation on that vessel at the time we went on.

Q. At the time you left that vessel were any other eggs brought to it while you and Colonel Hand were there?

A. Not while we were there. [2683]

Q. At that time were any eggs candled by Colonel Hand?

A. While we were on the vessel he candled some eggs.

Q. Where did they come from?

A. From the chill box of the vessel.

Q. Were any of the eggs on the pier candled by Colonel Hand?

A. I am unable to state that definitely. I recall looking at some eggs on the pier in his presence when we opened the box and looked at the eggs themselves, but whether he candled those or not I am not prepared to say. I know we candled eggs on the vessel, and I think they came from the chill box, but I can't explain it.

Q. Isn't it a fact that all the eggs that the Colonel candled were small eggs that he obtained off the pier?

A. I just stated that they came from the chill box.

Q. I asked you isn't it a fact that all the eggs he candled on the Josiah Royce were small eggs obtained from the pier?

(Testimony of E. Hewitt Magee.)

A. Well, they all came from the pier at one time, but the ones he looked at we took out of the chill box?

Q. Were any eggs taken from the pier onto the vessel for Colonel Hand to examine?

A. Not that I recall.

Q. Isn't that the only instance, Mr. Magee, where you had eggs that obviously had a label of the Department of Agriculture and others that did not that eggs were not examined contained in the cases which did not bear the stamp?

A. I don't understand your question. [2684]

Q. You were on a series of ships. On every one of those ships there were cases of eggs that did not bear a Department of Agriculture stamp, isn't that correct?

A. I believe so.

Q. Isn't this the only case, then, where the inspector down there did not candle and inspect some of the eggs contained in a box that did not bear a Department of Agriculture stamp?

A. Well, on this particular ship he candled eggs, as I say, that came from the chill box. Now, I do not recall whether he candled any taken from the pier or not. He did look at them. I looked at them, too. And I do not know whether he weighed them, candled them or not.

Q. Did you look at the eggs on the Josiah Royce?

A. I looked at some of these eggs.

Q. Did you observe after you had come on board the ship and come onto the pier—you saw the eggs

(Testimony of E. Hewitt Magee.)

on the pier, you went on the ship, and you then left the ship, is that right?

A. I saw the eggs on the vessel, saw some on the pier, and then we finally left. We were through.

Q. Did you examine any cheese on the Josiah Royce?

A. No, I do not recall examining any cheese.

Q. Did you weigh any cheese on board the Josiah Royce? A. No, I did not.

Q. Did you examine the outer cases of any cheese that were on the Josiah Royce?

A. I don't recall doing that.

Q. Do you know whether there was any cheese on that ship? [2685]

A. There was cheese, but I do not know what kind or how much.

Q. Later other eggs went down to the pier and were loaded onto the Josiah Royce; you know that, do you not?

A. I have heard that that was done.

Q. Well, did you ever see those eggs?

A. I don't recall seeing those eggs, no sir.

Q. Did you ever go down there with an inspector to examine the second shipment of eggs on the Josiah Royce?

A. We may have stopped again for a short period of time. I can't recall precisely whether or not we did. We had numerous ships over in those piers and we were going back and forth continuously, and it is possible that we stopped in the

(Testimony of E. Hewitt Magee.)

next day and Colonel Hand looked at the new lot of eggs.

Q. You are talking of a possibility. Have you any recollection as you sit there now as a witness of going back and examining and observing the cases and observing the eggs that were delivered on the second occasion to the Josiah Royce?

A. I am sorry, I can't remember definitely. Colonel Hand would have had records of that if he did it. I have no record about it.

Q. Then you went aboard a ship called the Henry White, is that right? A. Yes, we did.

The Court: It is now time to adjourn. The jurors will be excused until ten o'clock tomorrow morning. Keep in mind [2686] the admontion of the Court.

(Thereupon an adjournment was taken until tomorrow, Wednesday, March 13, 1946, at 10:00 o'clock a.m.) [2686-a]

Wednesday, March 13, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

The Court: Waive roll call, stipulating and agreeing all the jurors are seated in the box. Proceed.

E. HEWITT MAGEE,

recalled.

Cross examination (Resumed)

Mr. Faulkner: Q. Mr. Magee, on yesterday you testified concerning the examination of certain eggs

(Testimony of E. Hewitt Magee.)

on these vessels. When did you make up your mind to make an examination of butter and cheese on the vessels to which Nye & Nissen were delivering merchandise?

A. I don't think we made our examinations of butter except only a few instances where it was scored by Colonel Hand more or less out of curiosity. The cheese, as I mentioned, I believe was weighed after we had information that possibly that would be short in weight.

Q. I asked you when. When did you make up your mind to examine and weigh cheese, Mr. Magee?

A. The exact date I do not recall. It was probably on the second, or third, or fourth ship we went on.

Q. The second, or third, or fourth ship you went?

A. It was after we had been on a few ships that we started to weigh the cheese. I don't recall exactly which vessel or the date.

Q. Can you give me the names of any ships that you were on [2687] other than those that you testified to on your direct examination?

A. Of other ships I was on?

Q. Yes, in relation to examining merchandise of Nye & Nissen.

A. Well, I was on the Point Arguello.

Q. When was that, what month?

A. That was in May, 1944, I believe. I believe I was on the Charlotte Cushman. I don't recall if I testified to that, or not. I don't think I did.

(Testimony of E. Hewitt Magee.)

Q. What other ships, Mr. Magee?

A. I was on one or two other ships with Special Agent Dallas Johnson. He kept the records and he will cover those ships. I don't recall just which ones they are offhand.

Q. What other ships were you on in the month of April, 1944?

A. Well, I believe we covered the vessels I was on in April, 1944, on direct examination. I don't recall any other ones that I was on that were not mentioned.

Q. Were you ever on a ship called the Rainbow?

A. I was not on the Rainbow.

Q. Did there pass over your desk any reports relating to an examination of merchandise on the Rainbow?

A. Yes. We had agents on the Rainbow.

Q. Pardon me?

A. Agents from our office were on the Rainbow, but I don't think I was.

Q. What were the agents' names who were on the Rainbow?

A. One agent, I believe, was George Van Guerpin, and another agent, I believe, was Robert Ellis, if I am correct. [2688]

Q. Were you ever on the Cape Sandy?

A. No, I was not.

Q. Did you have any report relating to the Cape Sandy, over your desk?

A. The Cape Sandy?

Q. SS Cape Sandy, S-a-n-d-y.

(Testimony of E. Hewitt Magee.)

A. No, not that I recall.

Q. Do you recall the names of the ships that you were on with Mr. Johnson where he made examinations of any merchandise?

A. Some of them.

Q. What are the names?

A. As I say, the Charlotte Cushman, I believe, was one.

Q. Any other?

A. Possibly the Cape Breton. I don't recall exactly if I was on that vessel, or not. I know he was on there. The Sacajervea, I believe.

Q. Any others?

A. No, not that I can definitely recall. I am not sure if I went on the Sacajervea with him.

Q. Were you on a vessel called Toussaint l'Overture? I will have to get Mr. Sullivan's help on this, your Honor. Toussaint l'Overture.

A. No. I recall I was on one called the Day Star.

Q. Were you on that particular ship, the Toussaint l'Overture? A. No.

Q. Did you have any report that any agent of your department was on that ship?

A. No, I did not.

Q. You testified that you were on the Cape Pillar, as I recall, with Colonel Hand; is that correct? A. I believe I did.

Q. Do you remember, without the aid of these writings, that you were or were not on that vessel?

A. I remember being [2689] on the vessel, yes.

(Testimony of E. Hewitt Magee.)

Q. You recall when you were on the vessel?

A. I believe it was the 25th of April, 1944.

Q. Do you recall without the aid of your notes the quantity of eggs involved?

A. No, I do not.

Q. You do, however, remember that there were, with the aid of your notes, and the quantity; am I correct in that?

A. I think I would if I could see my notes.

Q. It is a fact, is not, Mr. Magee, that on that occasion of your visit to the Cape Pillar that there were 35 cases of eggs that bore a Department of Agriculture stamp and there were ten cases of eggs that did not? A. That is correct.

Q. Do you recall an examination of the eggs aboard that vessel by Colonel Hand?

A. Yes, I recall that he made an examination of representative lots, or representative cases from these eggs.

Q. Do you recall whether he drew cases from those that had a Department of Agriculture stamp on? A. I am quite sure that he did.

Q. How many?

A. Well, I have no record of exactly how many cases, so I would be unable to say definitely.

Q. How many did he draw, altogether, from both sources, do you remember?

A. No, I don't remember exactly.

Q. It is a fact, is it not, Mr. Magee, that on the occasion of the examination of eggs on board the Cape Pillar, that Mr. Hand drew three cases out

(Testimony of E. Hewitt Magee.)

of the ten cases that did not [2690] bear a Department of Agriculture stamp?

A. Well, I wouldn't know if that was a fact, or not. I don't have any record on my notes. I would be unable to say the exact number of cases.

Q. Is this not a fact, that he drew no cases from those that bore a Department of Agriculture stamp?

A. I don't think that is correct. However, he has the record. I wouldn't have that.

Q. Did you examine any of the eggs that he examined?

A. I observed him part of the time he was making his examination of the eggs.

Q. Did you observe the particular eggs aboard the Cape Pillar?

A. I observed the 45-case lot of eggs.

Q. Did you observe him weigh on a hand scale the eggs on the Royce, Cape Pillar and the John Muir?

A. I know that he had a hand scale with him and that the hand scale was always set up beside his candling light to enable him to weigh certain eggs on the scale.

Q. Did you observe the weights that he had fixed that hand scale to? A. No, I did not.

Q. Did you observe him weigh any of the cases?

A. On which vessels

Q. The John Muir, Josiah Royce or the Cape Pillar?

A. No, I don't recall him weighing the cases on those vessels. He may have, but I don't recall.

(Testimony of E. Hewitt Magee.)

Q. Did he have a scale there for that purpose?

A. He had [2691] an egg scale there for that purpose, but I don't remember whether he had the big scales with him at that time, or not.

Q. At sometime during your examination aboard these vessels you got possession of a scale?

A. That is correct.

Q. What scale was that?

A. That is the scale that we used to weigh all the cheese and weigh cases of eggs on the vessels when we kept records of that.

Q. Where did you get the scale?

A. We borrowed that scale from the U. S. Post Office Department.

Q. When did you borrow it?

A. I, personally, did not borrow the scale, but it was obtained, I believe, in the latter part of April, 1944.

Q. Did your department have possession of that scale from the latter part of April, 1944?

A. We have had physical possession of the scale since the day we borrowed it.

Q. Your best recollection was in the latter part of April, 1944?

A. Sometime in April, 1944, after we started to go on these ships.

Q. Isn't it a fact you borrowed possession of that scale at or about the time that you made a contact with the man named Nystrom?

A. I made a contact with the man named Nystrom on the 22nd of April, 21st or 22nd of April,

(Testimony of E. Hewitt Magee.)

1944, but I know that we did not have the scales, we obtained the scales after that date.

Q. You had it after, but within a few days?

A. Well, within [2692] a short time after that because we did not contact Mr. Nystrom, we did not know which vessels were obtaining deliveries of Nye & Nissen merchandise. We had no use for the scales then.

Q. You had what?

A. We had no use for the scales, because we didn't know what vessels were obtaining deliveries from Nye & Nissen Company.

Q. Your department were investigating shipments from the firm of Nye & Nissen as early as February, 1944; was it not?

A. I, personally, did not have anything to do with this case until, I believe, March of 1944, and I would have no knowledge that there were any deliveries to War Shipping vessels checked until Special Agent Dallas Johnson and myself checked them.

Q. You had available, your department, the time of deliveries of the firm of Nye & Nissen, all of the facilities of every shipping company involved and the facilities of the War Shipping Administration, do you not, facilities to determine the time of deliveries?

A. Well, I don't understand just what you mean by facilities.

Q. The time of the deliveries.

(Testimony of E. Hewitt Magee.)

A. We obtained that information from certain shipping companies.

Q. In other words, it was a very simple matter for you to obtain information from maybe a dozen sources as to the time when the firm of Nye & Nissen made a delivery to the waterfront, wasn't it? A. No, it was not. [2693]

Q. You mean it was indispensable to your investigation that you form a contact with the driver of Nye & Nissen?

A. It was considered so at that time. We didn't wish to contact dozens of people to find out when the deliveries would be made, because we knew of any of those dozens of people should happen to call up the officials of Nye & Nissen Company they would immediately change their policies. We wanted to find what the policies were, so we could check on the deliveries.

Q. At the time you were down there checking certain ships you had already gone to that firm of Nye & Nissen and interrogated employees in that firm, had you not? A. Had I?

Q. Your department? A. Possibly so.

Q. There wasn't any question in your mind, was there, that in the months of March, April and May, 1944, that the firm of Nye & Nissen knew that their shipments to the waterfront were being investigated by your department, was there?

A. I am quite sure they did not know it.

Q. You are quite sure they did not know it?

A. From all indications they did not. [2694]

(Testimony of E. Hewitt Magee.)

Q. Every ship steward, ever clerk, every employee of those shipping companies saw you going down there on the occasions you went, didn't they?

A. Not every clerk, not every steward.

Q. Not all of them, but the employees of those shipping companies knew who you were and knew who Mr. Johnson was, isn't that right?

A. We made it a point when we went to the vessel usually to see the steward of the vessel and possibly the captain, but we did not necessarily go to the steamship company or talk to every employee available. I do not think they knew it.

Q. You do not think they knew it. How many drivers of Nye & Nissen did you contact?

A. At what time?

Q. In the months of April and May in 1944?

A. Well, for part of April and part of May we just contacted one. I think we did talk to another one at a little later date.

Q. What was his name?

A. Paul Robinson.

Q. Anyone else?

A. We talked to former drivers for the company.

Q. I mean people who were driving that could advise you of the time of the arrival of merchandise on the pier?

A. No, that was the only one. We did not ask Mr. Robinson for that information.

Q. You did not. Were those the only two in the months of April and May?

A. So far as I can recall.

(Testimony of E. Hewitt Magee.)

Q. Have you any documents that would refresh your recollection [2695] on these subjects which you answered over and over again, "So far as I can recall"?

A. No, I have no documents. You asked concerning whether we contacted anyone else, and my only answer is we did not as far as I can recall. I talked to many, many people concerning this matter and I am not always certain of the exact times I contacted them.

Q. At the time that you started this investigation your purpose was to determine the quality of the merchandise delivered from Nye & Nissen, wasn't it?

A. Our purpose was to find out what their deliveries consisted of as compared to what they were charging the Government for.

Q. And you made how many examinations without making any examination of cheese?

A. Probably six or seven.

Q. Isn't it the fact, Mr. Magee, that the only time you made an examination of cheese on that waterfront was after Mr. Nystrom told you that he had some cheese down there that you ought to look at that he had selected himself in the plant of Nye & Nissen?

A. To the best of my knowledge we examined cheese after being told or after receiving information that Nye & Nissen or some of these other companies possibly were short weighting cheese. Now, Mr. Nystrom when contacted by me at first was

(Testimony of E. Hewitt Magee.)

requested merely to call us and let us know where he was making a delivery. We wanted no other information from him at any time. He occasionally, when he would call, would talk to some other agent in the office and he would mention where he was making a delivery, and on [2696] one of those occasions I believe he added the information that he had observed some of the defendants' scraping weights from the cheese. That is, as I remember, about all he said concerning the cheese. Considering that with some of the other information we had we thought the best policy would be to weigh some of this cheese and see what it actually weighed upon delivery.

Q. On the first ship you went down there on you had been investigating this firm of Nye & Nissen for a period of time, your department; when you went down to the John Muir, why didn't you examine every article of merchandise delivered to the pier for that vessel?

A. Well, at the time I went to the John Muir I personally had not been investigating the company for any great length of time and, as I said before, at that time we had heard various complaints concerning eggs, so we went there primarily to check the eggs on the vessel. We had no scale. We tried to use on some vessels any scale aboard the ship, but they proved to be too inaccurate for our purposes, so we did not weigh the cheese until such time as we obtained the new scale from the Post Office.

(Testimony of E. Hewitt Magee.)

Q. You got the scale to weigh the cheese from the Post Office, according to your testimony a moment ago, at the same time you went to the John Muir?

A. Well, I didn't get it at the same time.

Q. Had you ever read a report of any kind that was supposed [2697] to have emanated from a man named Pineda before you went on the John Muir?

A. I believe my interview with Pineda was after I went on the John Muir. I do not know the date of his statement.

Q. I didn't ask you that at all, Mr. Magee. Had you read any report of any kind that was supposed to have emanated from a man named Pineda before you went on the John Muir?

A. Well, I don't recall when I took a statement from Mr. Pineda, but I did not see any report prior to the time I talked to him, if that is what you mean.

Q. It is a fact that you took two kinds of reports from these various witnesses: you got a report from them, and then after you had determined what the exact fact was in relation to a particular proposition, you went to these various witnesses and tried to get them to testify they knew something about it, isn't that right?

A. No, it is not.

Q. Isn't it a fact that you have said to some witnesses, "Do I have to take a baseball bat to you, to knock the answer into your head?" Did you ever say that to anybody?

(Testimony of E. Hewitt Magee.)

A. I wouldn't be here today if I had.

Q. Did you—yes or no—while this case has been on trial, say to a prospective witness in this case, "Do I have to take a baseball bat to knock the answer into your head?" Yes or no?

A. Most certainly not.

Q. Have you ever in discussing the matter of the testimony that [2698] you were seeking from a witness said to them, "If you don't help the Government you will have your citizenship cancelled?" Answer that yes or no?

A. At no time have I ever made any threats to any witness in this case or any other case that I have worked on.

Q. Did you ever discuss the matter of the citizenship of some of the witnesses you were asking questions about the firm of Nye & Nissen?

A. No, I did not.

Q. Never discussed their citizenship at all with any of them, is that right?

A. I may have asked them whether they were a citizen or not, but nothing further than that.

Q. Did you ever indicate to them that the Federal Government had the power to revoke their citizenship? A. No sir.

Q. Never at any time? A. No sir.

Q. Now, you went aboard a vessel called the Cape Charles. Do you recall that?

A. I recall being on the Cape Charles.

Q. Do you need your notes?

A. I should have them.

(Testimony of E. Hewitt Magee.)

Q. What?

A. I would like to have them if you wish specific information about it.

Q. We come to the Cape Charles. Isn't it a fact that you have indicated to witness after witness, Mr. Magee, what you claimed happened in the firm of Nye & Nissen and asked them to verify your statement of what you said you knew was happening in that firm? Haven't you said that to witness after witness?

A. That I have told them what to say? [2699]

Q. Yes, that you have told them. "Now, there were certain things here and we know that they did this, now, isn't that the fact?" Haven't you used expressions like that with witness after witness?

A. No, very very few witnesses I would tell them that we are familiar with the practice of switching eggs down at the plant. Now, we would then ask them whether they had switched eggs and if so, whether they could explain if they had participated in that. But I did not tell them exactly what had happened there. I merely mentioned that to save time at the beginning of the interview.

Q. Hasn't it happened while this case has been on trial that you have been trying to get witnesses to sustain certain things that you claim happened and the witnesses have told you, "If you put me upon the stand and try to have me testify to that, the lawyer for the defendants will make a liar out

(Testimony of E. Hewitt Magee.)

of me and, Mr. Magee, you have already made a liar out of me." Hasn't that happened?

A. No sir, I have had no such experience. There was one witness, however, who gave us a signed statement very freely and in a very cooperative manner, and we have talked to her and find out that now she does not remember very many of the points. Of course, we asked her why, and she told us she had been apparently interviewed by some member of the firm. Now, whether that had any connection with it or not——

Q. What was the name of the witness?

A. I have never told any witness that she has to answer certain questions or that [2700] she has to tell a certain story.

Q. What was the name of the witness you just referred to as having been interviewed by some member of the firm?

A. Mary Bacigalupi is who I was referring to.

Q. Didn't you say to Mary Bacigalupi that she would lose her citizenship if she would not help you?

A. Why, of course not.

Q. Did you ever say to a prospective witness, "You could either be a witness in this case or a defendant in this case"?

A. I don't recall having made such a statement to anyone.

Q. How was it Mr. Nystrom was not indicted in this case? Withdraw that. Did you discuss the matter of indicting Mr. Nystrom with him?

A. With who?

(Testimony of E. Hewitt Magee.)

Mr. Pratt: I object to that, your Honor.

The Court: The objection is sustained. Let it go out. Let the Jury disregard it for any purpose of this case.

Mr. Faulkner: Q. In connection with the Cape Charles, you did go on board the Cape Charles?

A. Yes, I did.

Q. Did you examine any cheese?

A. I didn't weigh the cheese.

Q. Did you examine it?

A. I saw the cheese on board the vessel, but I didn't conduct any examination of it.

Q. Did you observe any butter on board that vessel?

A. I observed some butter on board the vessel in the chill box.

Q. Did you weigh it? A. No, I did not.

Q. Now, on board that vessel you were accompanied by Captain Evans at that time, Major when he was in court here, is that [2701] correct?

A. That is correct, Major Evans and Special Agent Johnson.

Q. On board the Cape Charles did you weigh any eggs?

A. I personally did not weigh any eggs on that vessel.

Q. Did you observe anybody weighing any eggs on that vessel?

A. I observed Major Evans weighing individual eggs on that vessel.

Q. What was he using to weigh individual eggs?

(Testimony of E. Hewitt Magee.)

A. He had an egg scale with him.

Q. On the date that you were on the Cape Charles did you have a scale from the Post Office?

A. Yes, we did. I am quite sure we did.

Q. So that on the 29th of April you did have a scale or, rather—yes, April 29 you had a Post Office scale, is that right?

A. As far as I recall. I have no record of the scale here. I know the cheese was weighed and I believe it was weighed on that scale.

Q. And on that day you had the Post Office scale and it was used by Captain Evans then to weigh eggs, wasn't it?

A. I don't recall if he used that scale to weigh eggs or not. I recall him weighing individual eggs on his small egg scale, and I also know that the cheese was weighed. I do not recall whether he weighed the cases on it or not. I rather think he did, but I do not have any record of it.

Q. But at all events your memory is the scale was there, there [2702] was butter there, and there was cheese there, and there were eggs there?

A. That is right.

Q. And you have no notations of anything with respect to the weight of cheese or butter in relation to that vessel? A. No, I do not.

Q. Did you examine any of the eggs?

A. I examined the cases on that vessel and observed the labels that were on some of the cases or on the cases.

(Testimony of E. Hewitt Magee.)

Q. Do you recall on that vessel that there were thirty-six cases involved?

A. Yes, there were thirty-six cases of eggs.

Q. Did Major Evans select a representative lot of those eggs to candle in your presence?

A. Yes, he did. I helped him lift some of the cases into the little room that he used, that was dark, for his light.

Q. The method that was used was there were 32 cases of stamped eggs and 4 cases of unstamped eggs, and he selected three cases of unstamped eggs and one case out of the thirty-two of stamped eggs, is that right?

A. I don't know. I have no record of which cases he selected or which ones he used. I helped him lift the cases in but he selected his own samples.

Q. Did you prepare the samples on the Cape Charles and have them ready for Captain Evans then to inspect? A. No, I did not.

Q. Did you select three cases of unstamped eggs and one of the United States Department of Agriculture eggs? A. No, I did not.

Q. Did you on any occasion when you were there with Captain [2703] Evans select the eggs that were submitted to him for inspection?

A. No, I did not select the eggs. He was the one to make the inspection of the eggs. He picked his own samples, conducted his own inspection of them.

Q. At all events, you on no occasion selected the

(Testimony of E. Hewitt Magee.)

eggs and prepared the cases of eggs and brought them up to him for inspection?

A. Not that I recall, because, as I remember, if I was in the chill box he was with me and together we picked out eggs and carried them to where we were going to have him candle them.

Q. Mr. Magee, is it a situation of not that you recall or the fact is that you did not do it?

A. Well, I can't say definitely. My best recollection is that he picked his own samples on all occasions.

Q. You went aboard a vessel called the Henry White. Do you recall the Henry White?

A. I recall being on that vessel.

Q. Did you have the postal scale with you then?

A. I couldn't say exactly until—if I see my notes, see the date, and see what work was done on that vessel I could tell. If we had the scale, we weighed the cheese.

Q. What?

A. On the occasions we had the scale with us we would weigh the cheese if there was any on that particular order.

Q. You had the scale with you on the 29th of April on the vessel you just mentioned, and you just told us you did not know [2704] whether you weighed the cheese or not?

A. I said the cheese was weighed, but I did not weigh it. It was weighed by Special Agent Johnson on the Cape Charles. I did not know whether

(Testimony of E. Hewitt Magee.)

Major Evans had weighed the eggs with a scale or not.

Q. On the Henry White you observed certain cases of eggs on that vessel, did you not?

A. Yes, I did.

Q. And who were you accompanied by on that day?

A. I was with Special Agent Johnson and Colonel Hand.

Q. I think it was on the Henry White you say you observed these exhibits, U. S. Exhibits 36?

A. Yes, this came from the Henry White.

Q. Exhibit 37?

A. This was from the Henry White.

Q. I mean you observed it on the Henry White?

A. I observed it. I initialed them on the vessel.

Q. The next number?

A. This was on the Henry White. I initialed this one.

Q. Did you initial all these papers?

A. I initialed those three on the vessel.

Q. On the back?

A. Well, you will see my initial. I think it is in pencil. Usually under the initial of Special Agent Johnson I have "H.M."

Q. Is that your initial in the corner there?

A. Yes, that is my initial and the date.

Q. And then under Agent Johnson there——

A. That is right. [2705]

Q. And then over after the word "Pullet" here?

A. That is correct.

(Testimony of E. Hewitt Magee.)

Q. Did you take these out of the cases yourself?

A. I believe they were taken out of the cases by Special Agent Johnson. I saw them in the case. We pulled the top off and they were there.

Q. Do you recall which side was up on these tickets?

A. As far as I recall, the side was up that has that pencil writing on, the word "Pullet" on them.

Q. I mean you remember that clearly?

A. I do. I have seen other of those tags in the cases and generally that word is the one that is facing up as you open the box.

Q. How many tags were in the box?

A. I think there was just one in each case.

Q. And there were three altogether that you selected out of all these cases that you examined on the waterfront?

A. Those were the only tags we observed on the cases that were opened.

Q. Then you remember the incident clearly enough to indicate which side of the tag was facing up when you opened the case, is that right?

A. Yes, the side with the pencil writing on it.

Q. Do you have that in your notes?

A. No, I do not.

Q. I will call your attention to Exhibit 36. That is a Nye & Nissen printing on it, isn't it, and it indicates 30 dozen [2706] small eggs had at some time been candled by a candler, does it not?

A. It says under "Small", "30 dozen, Shipper

(Testimony of E. Hewitt Magee.)

No. 8." I don't know just what that means. I assume it means they were small eggs in there.

Q. What do you think the 8 means?

A. Possibly—I have no idea unless it is the number of the candler.

Q. Now, Exhibit No. 37 would indicate that 30 dozen of large eggs had been candled, would it not?

A. On this other side it would.

Q. That is the side that the candler fills out, isn't it?

A. That wasn't the side that was up in the box. This side was up in the box. I don't know what that means. It would possibly indicate 30 dozen large eggs.

Q. What kind of a box was it in?

A. Those particular tags?

Q. Yes.

A. Well, it was in a Nye & Nissen case.

Q. Yes, but what kind?

A. A wooden case.

Q. Are you sure it was a wooden case?

A. Well, I am not sure. Most of these vessels were wooden cases. This one in particular was a fiber case lot of eggs.

Q. Show me a label here among these labels that you have your initials on that came off a wooden case.

A. I believe most of these labels came off a wooden case.

Q. Show me one that you can testify you took off a wooden case.

(Testimony of E. Hewitt Magee.)

Q. Well, I can't state for sure, but on the Mission San Diego [2707] I am quite certain they were wooden cases and we have labels in here from that vessel.

Q. Go through the labels and pick out one which you will testify you took off a wooden case.

A. Well, we will pick this one out. I won't say positively I took it from a wooden case because I do not have the notes from that vessel, and if I did, I do not know whether I noted if they were wooden or fiber, but to the best of my recollection the cases on the Mission San Diego were wooden. Therefore that label came off that vessel; it would have to come off a wooden case, if my recollection is correct.

Q. You have just identified U. S. Exhibit No. 50, is that right? A. That is correct.

Q. How did you get it off the wooden case, Mr. Magee?

A. I had a penknife with me. We scraped some off. In some cases they were glued on on top of two or three other labels, and in some instances we would have to try on possibly three or four boxes before we could get one off in any kind of condition to preserve.

Q. This particular label, was that glued onto some other label?

A. I am unable to say whether it was or not. It probably was glued right onto the wooden case, if my recollection is correct that there were wooden cases on that vessel.

(Testimony of E. Hewitt Magee.)

Q. Did you ever ask Mr. Nystrom to bring you any labels? A. No, I did not. [2708]

Q. Did you ever see Mr. Johnson with any labels that you did not actually see him remove from a case of eggs?

A. No, I did not. We had no other labels in our possession except the ones we took from the vessels.

Q. At all events, you remember that on the Henry White the eggs were in wooden cases?

A. No, on the Henry White my recollection is that that was the one vessel that had fiber cases, and I believe the other ones that I was on had wooden cases. Now, I have no record in my notes of the type of case on there.

I would like to make a correction on that, if I may. My notes do have that the eggs were in wooden cases on this Henry White, so my recollection was a little incorrect.

Q. The ordinary egg case has a cleat on both ends, does it not? A. It does.

Q. These had a cleat on both ends, hadn't they?

A. They were the ordinary egg cases.

Q. Pardon me?

A. They were the ordinary egg cases so far as I know.

Q. They were the ordinary egg cases with a cleat to hold each end and the label is in between the cleats, isn't it?

A. The label fits between the boundary of the outside of the case, as I recall it.

(Testimony of E. Hewitt Magee.)

Q. And you took a penknife and got that label off a wooden case?

A. We did in some cases.

Q. You say "we". Did you?

A. I did. [2709]

Q. On the Henry White?

A. Yes, I took that label off, I am quite sure, on the Henry White. I initialed the label and I was there—if I didn't do it physically, I was there when it was done.

Q. Did you observe any cheese on the Henry White? A. Yes, I did.

Q. Did you weigh it? A. I did.

Q. Did you observe any American Processed cheese?

A. Yes, sir. There were eight bundles of 5-pound American processed cheese.

Q. What did they weigh?

A. Well, I have a note of the weights. I have seven of them and I have a notation the cheese was okeh so far as weight was concerned. That was the processed American cheese.

Q. You mean with respect to all the cheese on the Henry White the weight was okeh, is that right?

A. The only other cheese that was on there were two bags of grated cheese that weighed 19 pounds, 9 ounces.

Q. What?

A. Two bags of grated cheese were on there.

Q. What did they weigh?

A. I have a record here, 19 pounds, 9 ounces.

(Testimony of E. Hewitt Magee.)

Q. They were in supposedly 10-pound bags?

A. I think it was billed as 20 pounds. It weighed close to 20 pounds.

Q. Two bags of grated cheese. You weighed them and they were 19 pounds, and 9 ounces?

A. That is what my record shows. [2710]

Q. What does you record show that the 8 bundles of processed American cheese weighed?

A. No. 1, 33 pounds, 12 ounces; No. 2, 33 pounds, 12 ounces; No. 3, 34 pounds, 6 ounces; No. 4, 33 pounds, 10 ounces; No. 5, 33 pounds, 10 ounces; No. 6, 33 pounds, 14 ounces; No. 7, 33 pounds, 10 ounces. And that is as far as this record goes except it has a notation, "Cheese O.K.".

Q. It was quite obvious to you that the shipper, the vendee of that cheese, got at least twenty-five pounds too much cheese, wasn't it?

A. No, it was not.

Q. 8 bags at 30 pounds is 240, and every one of those packages ran overweight, didn't they?

A. I have seven listed here. I have eight bundles, 5 pounds, but I have seven listed, so apparently there were seven from what I can tell on this, but I have the notation "Cheese was O.K.". I do not think that it was overweight.

Q. There were eight bundles of cheese called for in this invoice, and each bundle that you weighed, weighed over thirty pounds, isn't that the truth?

A. Well, this may be in the box. I do not have the specific weight on this kind of cheese because these came in cellophane wrapped loaves and each

(Testimony of E. Hewitt Magee.)

loaf has the weight written right in the cellophane. There would be no way to change the weight or to cut part of that cheese off without destroying the whole loaf. And in all case on all vessels the processed American cheese was always as [2711] billed, with one exception. On one vessel they were one case short.

Q. Mr. Magee, was there any question in your mind at all that as to each of the cases that you weighed aboard the Henry White each one of them averaged more than ten percent over thirty pounds?

A. There is a question because, as I say, that is processed cheese that is wrapped in a cellophane wrapper. All of those loaves are of uniform size and they are wrapped at the factory, and they always are the same as the markings on the cellophane.

Q. You have just told us you weighed them and put the weights down. Are those the weights you weighed?

A. I can't say from this whether they are the weights of the cheese or the weight of the cheese with the box. It says, "Weight No. 1, 33 pounds, 12 ounces." But they may be including the box. I made no notation whether that was net weight or gross weight. I do not see anything on there whether it is with the box or without the box.

Q. Somewhere you made a note that the cheese was O.K.?

A. Yes, the cheese was apparently as billed for.

Q. In other words, there would be no question

(Testimony of E. Hewitt Magee.)

if a vendee received 25 pounds over weight on cheese that he will never complain, but if he gets it under weight he does complain?

A. If he had received over weight I would have noted it on there if I had known about it. We do not conduct these tests [2712] to be unfair. If there was more cheese than called for we would note that the same as we would note if there was less cheese than called for.

Q. You wrote down in your notes at the time you were on this ship more over weight cheese on that one boat, than you found under weight on all the boats combined, isn't that correct?

A. That is not correct.

Q. You were on board a vessel called the James Oliver? A. Yes.

Mr. Faulkner: Withdraw that.

Q. You were on board a vessel called the Cape Cumberland? A. I was. [2713]

Q. Do you recall the time?

A. Not exactly.

Q. Do you recall the lapse of time, Mr. Magee, between your presence on the vessel we just mentioned, the Henry White, that a week elapsed between the time you were on the Henry White and when you went aboard the Cape Cumberland; in that week did you go aboard any vessel that had merchandise from Nye & Nissen?

A. Probaby not. I don't have any master list of all the ships I went on, so I couldn't answer that exactly.

(Testimony of E. Hewitt Magee.)

Q. You mean you haven't got it in your pocket on the witness stand?

A. I have no record here.

Q. You have a record in your office of every ship you went on in connection with Nye & Nissen, haven't you? "Yes" or "No."

A. I make reports of everything I have done in this case that went to the War Frauds office.

Q. You have a record in your office that will show the time and the date of every ship you went on in connection with the Nye & Nissen investigation?

A. I probably did. I haven't checked lately.

Q. You have purposely failed to bring that in court so that from time to time you could say you do not remember whether it was on a particular ship, or not?

A. No, that is not true. I am not authorized to bring any confidential records of the FBI into court, because they are considered the property of the Attorney General of the United States. I have no authority [2714] to bring any confidential records here.

Q. All right. At all events, you were on the Cape Cumberland sometime—May 10, 1944; do you need your notes?

A. I would like to have them, please.

Q. Do you remember anything about the ship without looking at your notes?

A. Not that particular vessel; no.

(Testimony of E. Hewitt Magee.)

Q. Do you remember anything about the cheese without looking at your notes?

A. No, I don't.

Q. Or eggs?

A. There were eggs aboard the vessel.

Q. Do you recall whom you were with?

A. On the Cape Cumberland?

Q. Yes.

A. I couldn't say for sure.

Q. Do you remember weighing some cheese on that boat? A. Yes, I did.

Q. How many cases did you weigh?

A. I weighed four cases of cheese, California Loaf cheese.

Q. Did you weigh them gross or did you weigh them net?

A. I weighed the contents of each case.

Q. What did each case weigh?

A. The contents of the first case weighed 26 pounds 4 ounces. The contents of the second case weighed 26 pounds 8 ounces. The contents of the third case weighed 25 pounds 5 ounces. The contents of the fourth case weighed 26 pounds 5 ounces.

Q. That amounted to a little over 104 pounds for the entire lot of cheese?

A. 104 pounds 6 ounces.

Q. Were the cases marked with that weight?

A. No, sir. [2715]

Q. How do you know that?

A. I have a notation, "No Weight on boxes."

(Testimony of E. Hewitt Magee.)

Then I have on here notations of the markings that were on the boxes.

Q. What were the markings on the boxes?

A. On each box was the following mark, "California Cheddar Loaf cheese Factory Number 1621, Nye & Nissen—S.F."

Q. "S.F."? A. "S.E."

Q. Is that all?

A. On the end of the loaf there was a marking on the cheese.

Q. What was the marking on that?

A. "Factory 1621. Whole Milk."

Q. Factory, what—1621?

A. "Factory 1621. Whole Milk." There was also a stamp on each box.

Q. Was there a date on the individual reels of cheese?

A. These were loaves of cheese. According to my record that was the complete notation and I remember that they were placed on each cheese, itself, with a purple type ink. I had that jotted down here, but I don't think there was a date on the cheese.

Q. Mr. Magee, how were these cases packed, was there one key cheese in each case?

A. No, there were five loaves in each case. I mean by a loaf, well, they were loaves similar to a small-sized loaf of bread. The cases were filled with those five loaves.

Q. You have seen cheese before, haven't you?

A. Yes. [2716]

(Testimony of E. Hewitt Magee.)

Q. In other words, those loaves in each of those cases were loaves that would run between five and seven or eight pounds?

A. I didn't weigh the individual cheeses. I put the whole weight on the case at one time, so I didn't know what the individual ones would weigh.

Q. Well, you knew when you were examining the packages what the normal loaf should weigh to make 112 pounds, didn't you?

A. No. On this cheese I had no idea until I weighed them what the contents of such a case should weigh, but after weighing loaves of cheese, on two or three vessels, I found they always weighed about this same weight that I have listed here. In other words, five would weigh 26 pounds and a few ounces or sometime shortly under 26 pounds.

Q. The average weight that would make up the 112 pounds would have been 28 pounds to the case?

A. It would have been, yes.

Q. None of these cases weighed 28 pounds, did they? A. No, they didn't.

Q. There was no date on them?

A. There was a date on the stamp appearing on the case.

Q. What was that date?

A. May 8, 1944, and the stamp said, "Government graded U. S. Grade A."

Q. May 8, 1944? A. Yes.

Q. Was that a Department of Agriculture stamp?

(Testimony of E. Hewitt Magee.)

A. It appeared to be so. It said, "U. S. Department of Agriculture, Government Grade 5-8-44, U. S. Grade A." That appeared on the stamp.

Q. On the outer box? A. Yes.

Q. Not on the individual cheese?

A. No; on the outside, but there was no weight marking.

Q. Was the box a fiber case or a wooden box?

A. They were wooden boxes.

Q. Regular cheese boxes, or orange boxes, or egg boxes?

A. No; in this case they were apparently regular cheese boxes, because the loaves filled the whole box, and I recall we opened them with a hatchet, took the top off with a hatchet.

Q. You then went to a ship called the Heber Creel? A. Yes.

Q. Did your have the scale with you?

A. I believe we did.

Q. Do you know what happened on the boat without your notes? A. No, I don't.

Q. Do you recall whether there were any eggs on board the vessel?

A. I don't recall whether there were eggs on the vessel, or not. I am quite sure there was cheese.

Q. Do you recall whether any of the eggs were examined?

A. Possibly. If there were eggs on there they were possibly examined.

Q. Do you remember who examined them?

(Testimony of E. Hewitt Magee.)

A. Major Evans or Colonel Hand, if they were along.

Q. If they were what?

A. Along. My notes will show that.

Q. Without your notes can you tell?

A. One, I believe, was along, but I can't tell without the notes.

Q. Do you recall without looking at your notes, Mr. Magee, [2718] how many eggs were inspected on that vessel?

A. No, I don't recall.

Q. Can you recall any reason why eggs were not inspected on that vessel?

A. No; there would be no reason if there were any eggs delivered in the order, and if the voltage of the vessel was correct so they could use a candling light, not to have examined them. There were one or two ships where there was 220-volt current so the eggs were not examined because they could not use the candling light.

Q. Now, with the aid of your notes, please tell me whether there were eggs aboard the vessel and how many eggs there were, and who candled them.

A. My notes reflect that there were 50 cases of Medium loose processed A eggs on the vessel. They also show that they bore no label. I observed that, myself. I know that.

Q. They bore no label?

A. Yes; "Bearing no label" it says.

Q. Who candled them and who examined them?